CF0000060857

CA 676/96 (2)

X 188/(Jail)
C.J. P.—5,000-9-81

Division Bench (Criminal)

APPEAL OF PRISONER

No. 371 Name लालचांद

Father's name भरू

Residence विपत पुर से चपा खेडी Age ३२

Sentenced to आजीवन कारावास on ३१।१।९६

Under section ३०२ भा द वि by ऐडिशनल सेशन जज जयपुर नगर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ३१।१।९६

2 Date of which copy received १०।२।९६

3 Date on which Appeal sent २०।२।९६

4 Whether the prisoner wishes to be represented or not – Yes/No.

RC 94

No. 371 Name लालचांद उ० भरू

Continued in ७५ Jail जयपुर नगर

No. 158 dated २०।२।९६ 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Raipur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

अधीक्षक,
Superintendent-Central/ Distt./ Sub-Jail
.....केन्द्रीय जेल, जयपुरनगर.....

Date of receipt in C. J. M.'S Office within time

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. ८१।२००।९६ Dated २६।२।९६

Forwarded to the सब्मिट की जाती है Sessions जयपुर नगर
along with S.B. No 282/2 R.H.A. Bail copies
Case No 129/2 R.H.A.B.

C.J.Magistrate

Date of receipt in Appliate Court

२८।२।९६

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

आदेश पत्रक

मामला क्रमांक Cr. App No. 676/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

14.2.2006

Mr. Ashok Dixit, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J

Accused/appellant Balchand has preferred this appeal questioning the legality & correctness of judgment of conviction & order of sentence dated 31.1.1996 passed by learned Additional Sessions Judge, Jashpurnagar in Sessions Trial No.282/95 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing murder of Ramprasad convicted him under Section 302 of the I.P.C and sentenced to undergo imprisonment for life and pay a fine of Rs.2,000/-, in default of payment of fine to further undergo S.I. for one year.

The prosecution case, in brief, is that on 25.10.1995 at about 7.00 a.m. deceased Ramprasad went towards the kitchen garden behind his house and at that time his wife Ketki Bai was sweeping the courtyard of

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

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the house. On hearing the noise of Ramprasad, Ketki Bai went towards the kitchen garden, which was on the backside of the house and saw that her husband was lying unconscious on the ground, accused Balchand was attacking him with the axe on the head and face and accused was brandishing the axe in the air. Her son Bhubneshwar (PW-6) and Malti, daughter of his brother-in-law reached the place of occurrence and saw that accused Balchand was assaulting her husband on the right side of forehead, above the eye, on the mandible region, blood started oozing out of it and her husband became unconscious. In the meantime, Lakhan & Gajadhar also came and they were asked to bring the jeep from Duldula. They took Ramprasad in the jeep for treatment and lodged the report in the police station thereafter. However, on the way Ramprasad succumbed to the injuries. On receiving this information, the Station House Officer, Police Station Kunkuri registered the report (EX.P-7) and left for the scene of occurrence. The Investigating Officer took into possession the blood stained soil and plain soil from the place of occurrence and after giving notice to the Panchas prepared the Panchnama (Ex.P-2) of the dead body of Ramprasad. One Sari stained with blood on being produced by Cituram was taken into possession under Ex.P-3, weapon of offence i.e. axe was taken into possession under Ex.P-4 on being produced by accused Balchand. One chadar was taken into possession under Ex.P-5. Clothes of deceased were taken into possession

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

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	-3-	

under Ex.P-6. Merg intimation (Ex.P-10) was given by the A.S.I. to Station House Officer, Police Station Kunkuri. Body of deceased Ramprasad was sent for postmortem examination under Ex.P-11 to the Primary Health Centre, Kunkuri, where Dr. S.Toppo (PW-11) conducted the postmortem and prepared the postmortem report Ex.P-12. Recovered axe was sent for examination by the doctor (PW-11). The doctor gave his report (Ex.P-13) in which he opined that the injuries found on the body of deceased Ramprasad could be caused by the axe in question. Recovered axe and clothes were sent for chemical examination to the Forensic Science Laboratory, Raipur from where the report Ex.P-14 was received.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Additional Chief Judicial Magistrate, Jashpurnagar, who in turn committed the case to learned Sessions Judge, Raigarh from where learned Additional Sessions Judge, Jashpurnagar received the case on transfer for trial.

The prosecution in order to establish the offence against the accused/appellant examined eleven witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he has been falsely implicated in the crime by Ketki Bai & Anita Bai.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

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Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment.

We have heard Mr. Dixit, Advocate for accused/appellant, Mr. Deo, Additional Public Prosecutor with Mr. Mishra, Panel Lawyer for the State/ respondent and perused the impugned judgment and record.

Homicidal death of deceased Ramprasad is not in dispute.

As far as the involvement of accused/appellant in assaulting the deceased Ramprasad with the axe in question is concerned, PW-1 Lakhanram has stated that on the fateful day on hearing the noise he went towards the house of Ramprasad, saw that Ramprasad was lying on a cot and blood was oozing out of the injuries. Thereafter, he was asked to bring the jeep, therefore, he went to bring the jeep and brought the same. PW-2 Vikkuram has stated that on the fateful day he was informed by Lakhanram (PW-1) that Balchand has murdered Ramprasad, therefore, he went to the house of Ramprasad where he saw that Ramprasad was lying in injured condition and he was not able to speak. PW-3 Gopal Sai has stated that on hearing the noise he came out of his house and saw that accused/appellant was holding axe and by the time he reached the accused/appellant assaulted Ramprasad with the axe as a result of which Ramprasad fell down. Ramprasad received injuries on the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(22)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

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head and when he tried to intervene, the accused said that who are you to intervene, thereafter, assaulted 4-5 times to deceased Ramprasad. In the meantime, Ketki Bai also reached. Ketki Bai (PW-4) has corroborated the above evidence of PW-3 Gopal Sai. PW-5 Mangalnath has stated that after hearing the cries he rushed to the house of Ramprasad where he saw that Ramprasad is lying in injured condition. Bhubneshwar (PW-6), son of deceased has stated that on hearing cries he came out of the house and saw that accused/appellant was brandishing the axe and injuries were present on the head, cheek, mandible and forehead of his father. Similar is the evidence of PW-7 Malti.

The above evidence of Bhubneswar (PW-6) & Malti Bai (PW-7) that they saw that Ramprasad was lying in injured condition and accused was brandishing the axe, corroborates the evidence of Gopal Sai & Ketki Bai. Moreover, the weapon of offence i.e. axe was recovered from the accused/appellant and the doctor has opined that the injuries which were found on the body of Ramprasad could be caused by the axe in question. The above evidence also stands corroborated by the medical evidence in which Dr. S. Toppo (PW-11) has stated that on 25.10.1995 he conducted the postmortem examination on the body of Ramprasad and found that there was a incised wound in front of the head in the size of 4cm x 0.5cm x 1.5cm, parietal bone below the wound was found fractured, there was a incised wound on the right eye and another

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

incised wound was on the right side of face and one incised wound was on the mandible region in the size of 1.5cm x 0.5cm x 1.5 c.m. and the mandible bone was found fractured.

In view of the above medical evidence, the evidence of Gopal Sai (PW-3) & Ketki Bai (PW- 4) stands corroborated and the involvement of the accused/appellant in the crime in question is established. Moreover, the defence has not been able to elicit any circumstance in the cross-examination of these witnesses, which makes the evidence of these two witnesses unreliable and untrustworthy.

Therefore, looking to the manner in which the deadly weapon like axe was used in causing the injuries and that too on the vital part of the organ, it is established that the accused/appellant assaulted the deceased with the intention to cause his death and as such we do not find any illegality or infirmity in the judgment of trial court and there is no ground to interfere with the judgment of the trial court

In the result, the appeal being devoid of merit is liable to be dismissed and accordingly, it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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